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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

EB Docket No. 03-152

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)

WILLIAM L. ZAWILA)
Permittee of FM Station KNKS,)
Coalinga, California)

Facility ID No. 72672

AVENAL EDUCATIONAL)
SERVICES, INC.)
Permittee of FM Station KAAX,)
Avenal, California)

Facility ID No. 3365

CENTRAL VALLEY EDUCATIONAL)
SERVICES, INC.)
Permittee of FM Station KAJF,)
Firebaugh, California)

Facility ID No. 9993

H.L. CHARLES D/B/A FORD CITY)
BROADCASTING)
Permittee of FM Station KZPE,)
Ford City, California)

Facility ID No. 22030

LINDA WARE D/B/A LINDSAY)
BROADCASTING)
Permittee of FM Station KZPO,)
Lindsay, California)

Facility ID No. 37725

TO: The Commission

JOINT OPPOSITION TO APPEAL

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December 29, 2003

Counsel for the Above-Referenced Parties

1. William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting and Linda Ware d/b/a Lindsay Broadcasting (collectively, the “Parties”), by their undersigned counsel, hereby jointly oppose the Appeal of Richard B. Smith (the “Appeal”), filed December 15, 2003.¹ Therein, Smith appeals the Memorandum Opinion and Order (“*MO&O*”) of Administrative Law Judge Arthur Steinberg, released December 8, 2003, which denied Smith’s Petition for Leave to Intervene (“Petition”) in this proceeding. As will be shown below, the Appeal does not raise any question warranting reversal. Thus, the *MO&O* therefore should be affirmed and the Appeal denied.²

2. The issue before the Commission is a limited one - - whether the Presiding Judge correctly determined that Smith failed to meet the specific requirements of §1.223 of the Rules to be conferred intervenor party status herein. A review of the *MO&O*, the authority cited therein, and the pleadings below makes crystal clear that the Presiding Judge issued a legally valid and well reasoned decision³, and correctly concluded that Smith failed to demonstrate any

¹ The instant Joint Opposition is timely filed pursuant to §1.301(c)(7) and §1.4(h) of the Commission’s Rules. Although the Certificate of Service accompanying Smith’s Appeal states that the undersigned were served by email and first class mail, the only copy of the Appeal received by counsel was delivered by first class mail.

² Before turning to the merits of the Appeal, the Parties note that the Appeal is procedurally flawed because it fails to comply with both §1.49 and §1.301(c) of the Rules. The Appeal contains seven footnotes, all in 10-point type, not 12-point type as required by §1.49. If the footnotes appeared in 12-point type, the Appeal clearly would have exceeded the five-page limit prescribed in §1.301(c)(5) of the Rules. Accordingly, the Commission either should require Smith to conform the Appeal to the requirements of the foregoing Rules, or strike the offending footnotes altogether.

³ Although any objective reader of the Petition would conclude that Smith sought discretionary intervention pursuant to the requirements of §1.223(b), as opposed to intervention as a matter of right pursuant to the requirements of §1.223(a) as Smith claimed in unauthorized pleadings below, nonetheless, the Presiding Judge took pains to carefully analyze Smith’s Petition under the standards of both subsections of §1.223.

entitlement to becoming a party to this proceeding, whether as a matter of right under §1.223(a) of the Rules, or at the Judge's discretion under §1.223(b) of the Rules.

3. Still unwilling to end his futile battle, however, Smith has submitted an Appeal that only musters two feeble and unjustified criticisms of the *MO&O*⁴: The first one pertains to the Presiding Judge's proper conclusion that Smith is not entitled to party status under §1.223(a) because he "completely failed to demonstrate that he would be aggrieved, that his interests would be adversely affected, or that he would suffer a potential direct and substantial injury *as a consequence of the outcome of this proceeding.*" *MO&O* at ¶7 (emphasis in original). Smith claims that the Judge's analysis was "flawed" because it allegedly ignored Smith's contention that he may benefit if the KNGS construction permit held by William Zawila is revoked.

4. Importantly, unlike the certitude with which the Appeal now contends that Smith "stands to benefit considerably" (Appeal at ¶5; see also ¶7) if the KNGS permit is revoked, the Petition was tentative and far more cautious in setting out this argument. See ¶2 of the Petition, which states:

If the KNGS permit is deemed to be in full force and effect, it would prevent Smith from seeking to increase the power of Station KMAK(FM). If, on the other hand, the KNGS permit is deemed no longer to be extant ... that impediment to the possible improvement of Mr. Smith's station could be eliminated. (emphasis added).

By eliminating the inconclusive language highlighted above and including Footnote 4 in the Appeal, Smith has slyly and improperly attempted to present the Commission with a far less

⁴ Indeed, instead of focusing on points germane to this appeal, Smith devotes a substantial portion of his pleading (specifically, ¶¶ 6 and 10) to premature and wholly inappropriate arguments pertaining to the merits of one of the issues designated in this case, which has nothing to do with whether or not Smith should be accorded party status.

tentative and different argument than presented in the Petition. Such tactics should not be countenanced.⁵

5. Clearly, it is Smith, not the ALJ, whose reasoning is flawed. Indeed, Smith offers no legal authority or factual support whatsoever for his bogus claim that he should be accorded party status simply because the mere possibility exists that his station might be able to improve its facilities if the KNGS construction permit is revoked. In fact, Smith never proffered a reliable technical showing supported by an engineering statement to substantiate his claim. Further, while he may insist that the ALJ's analysis is "flawed", Smith offers absolutely no showing to refute the well-established standards for party-in-interest status summarized in the *MO&O* at ¶6. In short, Smith has no factual or legal underpinnings to support his claim that the Presiding Judge erred or engaged in a flawed analysis in his rejection of Smith's intervention request..

6. Smith's second argument is the trivial complaint that the *MO&O* at ¶ 8 "belittled" Smith's assertion that he would assist in the determination of the issues in the proceeding. See Appeal at ¶9. However, rather than disparaging Smith, the *MO&O* correctly observes, citing *Kenneth J. Crosthwait*, 79 FCC 2d 191 (1980), that the Commission has determined that personal knowledge of relevant facts, alone, is insufficient to secure party-in-interest status under §1.223(b) - - a crucial point which Smith ignores.

7. Ironically, if anyone herein has engaged in unwarranted belittling, it is Smith, who refuses to accept the fact that the Enforcement Bureau's legal staff is fully competent and capable of trying this case without the involvement of Smith's counsel. There simply is no need for the additional overlay and burden to this proceeding that Smith's counsel's presence would

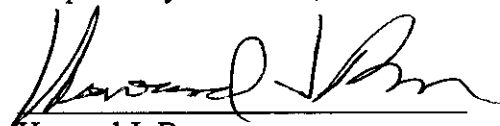
⁵This is so, particularly since Smith does not expressly take issue with the *MO&O* on this point, despite the fact that the *MO&O* at ¶7 quotes Smith's tentative language, and at Note 2, recognizes a material weakness in Smith's showing - - the lack of any technical substantiation for his claim that his station could benefit from revocation of the KNGS permit.

inject. The Presiding Judge has correctly recognized this, as has the Bureau. The Parties submit that the Commission should defer to the judgment of both the Presiding Judge and the Bureau on this point and reject Smith's specious and reckless claim that he, alone, is intent on litigating issues relating to KNKS.

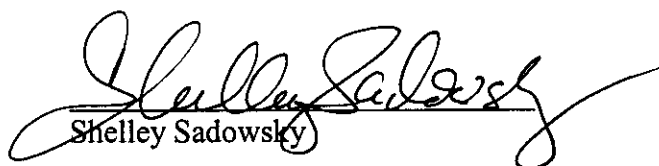
8. The issue is straightforward and need not be belabored. Smith had the onus to justify why he should be granted intervenor status here and he simply has failed to meet that burden. Smith cannot now lay blame at the Presiding Judge's feet when it is Smith's own shortcomings that caused his quest to be properly denied.

WHEREFORE, for reasons set forth above, the *MO&O* denying Smith party-in-interest status herein should be affirmed and the Appeal of Richard Smith denied.

Respectfully submitted,



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December 29, 2003

CERTIFICATE OF SERVICE

I, Karen R. Kelly, a secretary at Katten Muchin Zavis Rosenman, hereby certify that on this 29th day of December, 2003, a copy of the foregoing **JOINT OPPOSITION TO APPEAL** was sent via E-mail or First Class mail to the following:

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